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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,070	01/02/2004	Lynette Damir	SWAD-1-1002	1245

25315 7590 04/05/2005

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/751,070	DAMIR ET AL.	
	Examiner	Art Unit	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-14-05</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 39 the claim appears to be incomplete in that the claim begins with a description of a one-fold illustration, a two-fold and three-fold illustration. The "one-fold" illustration should be referred to as a "first-fold" and then second and third folds should follow. There is no support in the specification for the "one-fold", "two-fold" or "three-fold" terminology. The claims are presently incomplete. It is not clear as to what is exactly being claimed. It is not clear as to how the illustrations are structured in combination with a blanket. The present claims only claims a blanket and does not claim whether the illustrations are attached to or part of the blanket or are just in an unattached state such as printed matter which includes directions which are common when purchasing many products. The claim should be amended to clearly claim the structure of the invention and not just unattached instructions but rather a printed instruction illustration printed on the blanket or a label. The instruction of providing a folding sequence to swaddle a baby should be included and in a way to be more than just printed matter on a blanket. In claim 44 it appears that language is missing after the word "position". In claims 39-50 it is not clear as to what the term "illustration" encompasses.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39-42 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickling (US 3,693,290) in view of Ketch (US 5,282,749).

In regard to claims 39-42 and 44-50 Hickling discloses an infant swaddling blanket with a label 20 , which indicates where an infants head is to be placed when swaddling the infant. The snaps which indicate connection locations also indirectly and inherently indicate fold lines that occur when the fasteners are connected to swaddle the infant. However, Hinkling does not specifically disclose the "illustrations" as being printed, embroidered, embossed, appliquéd or woven in or on the blanket. Ketch discloses the use of illustrations to indicate the folding of garments. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to use fold line indicators as disclosed by Ketch adjacent to the fastener components of Hinkling in order to assist a user in the folding of the swaddling blanket and to use any known indicia application methods such as those listed which are well known in garment/ textile construction to attach indicia to an item. (See Hinkling, col. 2, line 34 – col. 3, line 63 and figures 1-7 and Ketch, col. 3, line 17 – col. 4, line 45; col. 7, line 65-68 and figures 1A-1F).

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Claim 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. None of the cited references alone or in combination disclose the illustrations as being detachably connected. The entire sequence of illustrations necessary to perform the entire swaddling of the infant should be claimed. Since all of the illustrations are necessary to perform the function of swaddling the infant the first illustration should be included in the independent claim and the steps should be included in consecutive order. The illustrations should be claimed in more specific terms such as drawings, labels or appliques and with written instructions. The present claims are extremely broad and only claim a blanket with printed matter thereon. Any blanket with printed on designs can be used to indicate where a fold is desired to wrap the infant. The specific illustrations and markings on the blanket where folds are to occur should be included. The present recitation "for a one-fold fold...etc." is only intended use and does not clearly claim the indicia necessary to make the first fold and folds thereafter. Suggested claim language would be to claim "A blanket for swaddling an infant in combination with instructional indicia thereon to instruct a user as to how to swaddle an infant comprising: a blanket; a first illustration with an instruction thereon to locate and instruct the placement of an infant on the flat blanket; a second illustration to locate and instruct the folding of a first fold line and folding of the blanket over the infant; a third illustration to locate and instruct the folding of a second fold line and folding of the blanket over the infant ... "etc. continuing with

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the claim language describing each fold and fold lines necessary until all folds are made and the infant is swaddled.

Response to Arguments

Applicant's arguments filed 1-14-05 have been fully considered but they are not persuasive. Hickling and Ketch disclose a blanket with printed matter thereon that includes instructional information. The present instructional information has not been properly claimed in order to bring a nexus between the blanket and the printed matter. Any type of printed matter with a one instruction or many instructional steps can be printed on the blanket as disclosed by Hickling and Ketch and would be an obvious modification to one of ordinary skill in the art. The printed matter must relate to the structure of the invention in a definite manner and must be clearly claimed. The present claims are incomplete and fragments of the invention and placed throughout the claims. The entire sequence must be included in the independent claim in order for the invention to be instructionally complete. Also, the present language was not in the original specification and can be broadly considered to be new matter since it now renders the claims indefinite and unclear.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


GLORIA M. HALE
PRIMARY EXAMINER